Appeal of Certification of Consistency

C20257-A9

Step 1 - Appeallant(s) Information

Appellant Representing:	San Joaquin County, Solano County, Yolo County, Central Delta Water Agency, and Local Agencies of the North Delta
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Step 2 - Covered Action being Appealed

Covered Action ID:	C20257
Covered Action Title:	Delta Conveyance Project
Agency Subject to Appeal:	California Department of Water Resources
Contact Person Subject to Appeal:	Katherine Marquez
Address:	1600 9th Street Bateson, 2nd Floor
City, State, Zip:	Sacramento, CA 95814
Telephone/Fax:	(866) 924-9955
E-mail Address:	dcp_consistency@water.ca.gov
Covered Action Description:	The covered action consists of the construction, operation, and maintenance of new SWP water diversion and conveyance facilities in the Delta that will be part of the SWP and will be operated in coordination with the existing SWP south Delta water diversion facilities. The covered action includes the following five key components and actions: (1) Two intake facilities along the Sacramento River in the north Delta near the community of Hood with on-bank intake structures that will include state-of-the-art fish screens approved by state and federal fish and wildlife agencies; (2) A concrete-lined tunnel, and associated vertical tunnel shafts, to convey flow from the intakes about 45 miles to the south to the Bethany Reservoir Pumping Plant and Surge Basin at a location south of the existing SWP Clifton Court Forebay; (3) A Bethany Reservoir Pumping Plant to lift the water from inside the tunnel below ground into the Bethany Reservoir Aqueduct for conveyance to the Bethany Reservoir Discharge Structure and into the existing Bethany Reservoir; (4) Other ancillary facilities to support construction and operation of the conveyance facilities including access roads, concrete batch plants, fuel stations, and power transmission and distribution lines; (5) Efforts to identify geotechnical, hydrogeologic, agronomic, and other field conditions that will guide appropriate construction methods and monitoring programs for final engineering design and construction (including the 2024–2026 Proposed Geotechnical Activities). For the purposes of this Certification, the covered action includes the actions described in Final EIR 1 Volume 1, Chapter 3, Description of the Proposed Project and Alternatives (California Department of Water Resources 2023c), refinements to those actions as described in Addendum 1 and Addendum 2 to the Final EIR (California Department of

Water Resources 2025a, 2025g), and commitments included in the adopted MMRP (California Department of Water Resources 2023e) (including the Compensatory Mitigation Plan for Special-Status Species and Aquatic Resources [CMP], as described in Final EIR Volume 1, Appendix 3F). For details on the engineering design for the covered action see the Delta Conveyance Project Concept Engineering Report (Delta Conveyance Design and Construction Authority 2024a). For details on operations of the covered action see the Delta Conveyance Project Operations Plan (California Department of Water Resources 2025f). For information on SWP water supply contract amendments, negotiations of project-wide contract amendments, and the Agreement in Principle (AIP) among DWR and many SWP contractors that describes a conceptual approach to cost allocation and the related financial and water management matters, see Final EIR Chapter 3, Section 3.22, Contract Amendments. See the Delta Conveyance Project Certification of Consistency with the Delta Plan (DCP.AA1.2.00001) for additional details.

Step 3 - Consistency with the Delta Plan

DELTA PLAN CHAPTER 2

G P1/Cal. Code Regs., tit. 23, § 5002 - **Detailed Findings to Establish Consistency with the Delta Plan.**

G P1/Cal. Code Regs., tit. 23, § 5002 identifies what must be addressed in a certification of consistency filed by a State or local public agency with regard to any covered action and only applies after a "proposed action" has been determined by a State or local public agency to be a covered action because it is covered by one or more of the regulatory policies listed under Delta Plan Chapters 3, 4, 5, and 7 of this form. Inconsistency with this policy may be the basis for an appeal.

A certification of consistency must include detailed findings that address each of the regulatory policies identified in Cal. Code Regs., tit. 23, §§ 5002-5013 and listed on this Form that is implicated by the covered action.

As outlined in Cal. Code Regs., tit. 23, § 5002 (b)(1), the Delta Stewardship Council acknowledges that in some cases, based upon the nature of the covered action, full consistency with all relevant regulatory policies may not be feasible. In those cases, the agency that files the certification of consistency may nevertheless determine that the covered action is consistent with the Delta Plan because, on whole, that action is consistent with the coequal goals. That determination must include a clear identification of areas where consistency with relevant regulatory policies is not feasible, an explanation of the reasons why it is not feasible, and an explanation of how the covered action nevertheless, on whole, is consistent with the coequal goals. That determination is subject to review by the Delta Stewardship Council on appeal.

Specific requirements of this regulatory policy:

a. G P1(b)(1)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(1) - **Coequal Goals**

As outlined in **Cal. Code Regs., tit. 23, § 5002 (b)(1)** , the Delta Stewardship Council acknowledges that in some cases, based upon the nature of the covered action, full consistency with all relevant regulatory policies may not be feasible. In those cases, the agency that files the certification of consistency may nevertheless determine that the covered action is consistent with the Delta Plan because, on whole, that action is consistent with the coequal goals. That determination must include a clear identification of areas where consistency with relevant regulatory policies is not feasible, an explanation of the reasons why it is not feasible, and an explanation of how the covered action nevertheless, on whole, is consistent with the coequal goals. That determination is subject to review by the Delta Stewardship Council on appeal.

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification: See attached documents. 25.11.17 Intro.pdf, 25.11.17 G P1b1 FINAL.pdf

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a. G P1(b)(2)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(2) - **Mitigation Measures**

G P1(b)(2)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(2) provides that covered actions not exempt from CEQA, must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018, (unless the measure(s) are within the exclusive jurisdiction of an agency other than the agency that files the certification of consistency), or substitute mitigation measures that the agency that files the certification of consistency finds are equally or more effective. For more information, see Cal. Code Regs., tit. 23, § 5002, and Delta Plan Appendix O, Mitigation Monitoring and Reporting Program, which are referenced in this regulatory policy.

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:	Invasive Species Mitigation Delta Plan Mitigation Meassure 4-1(e) requires DWR to: Develop and implement an invasive species management plan for any project whose construction or operation could lead to introduction or facilitation of invasive species establishment. As explained in the Best Available Science section of the DAS appeal, DWR has failed to apply BAS with respect to the emerging threat of the golden mussel. That discussion is incorporatred herein by reference. In addition, DWR has failed to include or require any mitigation measures to address golden mussel proliferation as a result of the construction and operation of the Delta Tunnel, consistent with Delta Plan Mitigation Measure 4-1(e). No equal or more effective mitigation measures are included in DWR's G P1(b)(2) Attachment 1 Delta Plan and Delta Conveyance Project Mitigation Crosswalk Table or elsewhere in the certification. Recreation Mitigation The Delta Plan EIR Mitigation Measure (MM) 18-2 requires that “If substantial temporary or permanent impairment, degradation, or elimination of recreational facilities causes users to be directed towards other existing facilities, lead agencies shall coordinate with impacted public and private recreation providers to direct displaced users to under-utilized recreational facilities.” (DSC, 2018 Delta Plan Amendments MMRP 48.) There is no analysis in the record of temporary or permanent impacts, because there is virtually no relevant data on both formal and informal recreational uses in the project area. Delta Tunnel FEIR Chapter 15 defines “temporary” as no longer than 2 years (FEIR, p. 15-26), and construction would last over a decade and a half depending on location and facility. The lack of analysis and associated mitigation or project modifications do not meet the standard set forth in the Delta Plan MM 18-2.

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b. G P1(b)(3)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(3) - **Best Available Science**

G P1(b)(3)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(3) provides that, relevant to the purpose and nature of the project, all covered actions must document use of best available science. For more information, see Appendix 1A, which is referenced in this regulatory policy.

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:	See attached documents. 25.11.17 BAS FINAL.pdf, 25.11.17 Intro.pdf

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c. G P1(b)(4)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(4) - **Adaptive Management**

G P1(b)(4)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(4) provides that an ecosystem restoration or water management covered action must include adequate provisions, appropriate to its scope, to assure continued implementation of adaptive management. For more information, see Appendix 1B, which is referenced in this regulatory policy. Note that this requirement may be satisfied through both of the following:

(A) An adaptive management plan that describes the approach to be taken consistent with the adaptive management framework in Appendix 1B; and

(B) Documentation of access to adequate resources and delineated authority by the entity responsible for the implementation of the proposed adaptive management process.

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

Under G P1 (b)(4)(B), DWR must have adequate funding for the adaptive amangement process. DWR's disussion of funding for adaptive management (Certification, pp. 186-187), fails to account for the very real funding challenges that the Delta Tunnel faces. For instance: -DWR's authority to issue bond funding for the Delta Tunnel is curently in litigation, and a funding source for the Delta Tunnel has not yet been approved by DWR, nor have the State Water Contractors agreed to pay for the construction costs of the Delta Tunnel. -DWR's currently estimated cost of $20 billion for the Delta Tunnel is likely not credible. According to the world's leading experts on megaproject management, the true cost is likely to be at least $27-32bn (without interest), making it one of the most expensive and extensive bored tunnels ever attempted globally. (See https://www.newcivilengineer.com/opinion/the-32bn-question-benchmarking-californias-delta-water-tunnel-against-global-tunnelling-risk-14-11-2025/ [subject to request for judicisl notice].) -If costs dramatically escalate, funds available for adaptive managment would be limited beyond DWR's assertions of adequate funding. -DWR lacks a Financial Plan and Feasibility Assessment for the project. Without resolved authority to fund the project, a sound cost estimate, a financial plan and feasibility assessment, DWR's assertions of adequate funding for adaptive management are not supprted by substantial evidence.

DELTA PLAN CHAPTER 3

WR P1 / Cal. Code Regs., tit. 23, § 5003 - **Reduce Reliance on the Delta through Improved Regional Water Self-Reliance**

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification: See attached documents. 25.11.17 Intro.pdf, 25.11.17 WR P1 FINAL.pdf

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DELTA PLAN CHAPTER 4

ER P1 / Cal. Code Regs., tit. 23, § 5005 - **Delta Flow Objectives**

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification: See attached documents. 25.11.17 Intro.pdf, 25.11.17 ER P1 FINAL.pdf

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ER P5 / Cal. Code Regs., tit. 23, § 5009 - **Avoid Introductions of and Habitat for Invasive Nonnative Species**

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

DWR claims that with respect to ER P5 it has "considered, and measures are included that, when implemented, will avoid exacerbating the impacts of preexisting nonnative invasive species and minimize the potential for new introductions of nonnative invasive species." (Certification, p. 147.) This statement is incorrect with respect to the golden mussel, however, as there are no such measures. (See G P1(b)(2) above [no measures].) While golden mussels are

mentioned in passing in the Certification (Certification, pp. 159-160), there is no specific information, and therefore no substantial evidence, to support a finding that DWR has addressed how the Delta Tunnel would not provide habitat for the golden mussel, or how golden mussel would be controlled on and within the extensive Delta Tunnel facilities. (See also Yang et al. 2024.) Yang Establishment risk_ An assessment framework.pdf

DELTA PLAN CHAPTER 5

DP P2 / Cal. Code Regs., tit. 23, § 5011 - **Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats**

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification: See attached documents. 25.11.17 Intro.pdf, 25.11.17 DP P2 Final.pdf

11/17/2025